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| 09/622,204 | 10/24/2000 | Johan Sjolholm | 104-290P | 8411 |

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EXAMINER

WEINSTEIN, STEVEN L

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 03/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/622204

Applicant(s)

SJOTHOLM

Examiner

S. WEINSTEIN

Group Art Unit

1761

SM
#10

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 9/30/02

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-35 is/are pending in the application.

Of the above claim(s) 14-35 is/are withdrawn from consideration.

☐ Claim(s) is/are allowed.

☒ Claim(s) 1-13 is/are rejected.

☐ Claim(s) is/are objected to.

☐ Claim(s) are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 6

☐ Interview Summary, PTO-413

☒ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

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Applicants traversal (received 9/30/02, paper no. 9) of the restriction requirement (mailed 8/30/02, paper no. 8) has been fully and carefully considered but is not found to be convincing. It is first noted that the criteria for restriction under 372 is different than that under 35 USC 121. The examiner had determined that the special technical feature was a bag formed of two walls and a duct means. Applicants appear to be urging that the special technical feature also includes the concept that the bag is sealed and is empty. Even assuming that applicants are correct in this regard, Rutter et al (4,981,374) evidences the fact that a bag with a duct means wherein the bag is sealed and is empty does not provide a contribution over the prior art. Applicants also urge that there would be no undue burden to consider all claims. Although this is not a factor under 372, nevertheless, claims drawn to methods of making, methods of filling, apparatus for making, apparatus for filling, etc would warrant a multiplicity of classes and subclasses and as such would be prima facie evidence of an undue burden.

The restriction requirement is made FINAL.

Claims 14-35 are withdrawn from further consideration as being drawn to non-elected inventions.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rutter et al (4,981,374).

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rutter et al in view of Wild (WO 89/12006) and Ostendorf (EP 524487).

Claims 7 differs from Rutter et al in the recitation of a carrying means in the form of an opening area in a portion of the bag where the walls are sealed (the claims "connecting portion"). As evidenced by Wild and Ostendorf, this structural feature is notoriously old in the art. To modify Rutter et al and provide a carrying means for its art recognized and applicants' intended function, i.e., to make handling of the bag of Rutter et al easier, would therefore have been obvious in view of the art taken as a whole. Claim 8 differs from Rutter et al in the recitation of an interconnected bottom wall. As disclosed, this is to allow the bag to stand upright when filled. Both Wild and Ostendorf teach that this structural element is also notoriously old in the art and for applicants' reason. To modify Rutter et al and provide a bottom wall so that one would be able to have the bag of Rutter et al stand upright after filling, i.e., for its art recognized and applicants' intended function, would therefore have been obvious in view of the art taken as a whole.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rutter et al in view of Wild (WO 89/12006), Wild (EP 380,107) and Saito et al (EP 539,800).

Claim 9 differs from Rutter et al in reciting that a portion of the "boundary lines are arched whereas Rutter et al shows straight lines. Whether these lines are configured to be

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straight or arched is seen to have been an obvious matter of design. In any case, the art taken as a whole teach that it was well established to provide boundary lines that are arched in association with duct means. See, for example, in this regard, the two Wild references and Saito et al. To modify Rutter et al and arch the boundary lines would therefore have been obvious in view of the art taken as a whole.

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rutter et al in view Buchanan et al (WO 98/00286), Jensen et al (4,023,607), Aesbach et al (WO 95/31329), Spies (3,604,491) and Toyoshima (Jp. 3-289451).

Claims 11 and 12 differ from Rutter et al in the provision of a separate duct means. As evidenced by Buchanan et al, Jensen et al, Aesbach et al and Spies it is well established to provide a bag, any bag, with a separate duct means. Note that Rutter et al discloses that a separate nozzle is an option in Rutter et al, (although its location is not clear). In any case, Rutter et al clearly teaches nozzles are optional features. To provide Rutter et al with a separate duct means at the duct portion or some other portion would therefore have been obvious in view of the art taken as a whole. Toyoshima is relied on as further evidence of duct means. Note that Toyoshima discloses that the duct means can be sealed at its inner end (claim 13) and to modify the combination and provide means closing ^{for} its art recognized and applicants' intended function would have been obvious.

The remainder of the references cited on the USPTO 892 form are cited as pertinent art.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn
January 22, 2003

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
2/25/03